

REMARKS

In response to the above-identified Office Action, Applicants amend the application and seek reconsideration thereof. In this response, Applicants amend claims 1, 3, 5, 8, 10, 12, 14-15, 17 and 19, and cancel claims 4, 7, 9, 13 and 18 without prejudice. Applicants do not add any new claims. Accordingly, Claims 1-3, 5-6, 8, 10-12, 14-17 and 19-20 are pending.

I. Drawings

The Draftsman objects to the drawings under 37 C.F.R. §§ 1.84(f), (g), (i) and (p)(2). Applicants have submitted replacement drawings to comply with the Examiner's request. Applicants respectfully request approval of the drawings and withdrawal of the Draftsman's objection.

II. Claims Rejected Under 35 U.S.C. §102(b)

The Examiner rejects claims 1-3, 6-7, 8-12, and 15-17 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,229,764 issued to Matchett et al. ("Matchett"). Applicants amend claims 1, 3, 10, 12, 15, and 17 and cancel claim 7.

To anticipate a claim, the relied upon reference must disclose every limitation of the claim. Among other limitations, amended independent claim 1 defines an apparatus for authenticating a user's identity comprising a database to store a first identity and a data compiler to integrate samples of data collected by a data collector collected over time to create a second identity reference and replace the first identity reference with the second identity reference to establish an updated first identity reference. Applicants respectfully submit that Matchett does not teach at least these elements.

In making the rejection, the Examiner characterizes Matchett as showing an authentication process that provides "continuous biometric checks of a user". See Paper No. 2, col. 2, (citing Matchett, col. 3, lines 18-19). In addition, the Examiner characterizes Matchett as showing data collecting and the recording of a particular user's relevant biometric characteristics (col. 4, lines 58-

59) and data matching through “the comparison of new biometric data to the user’s referenced biometric data (col. 4, lines 65-66). See Paper No. 2, column 2.

Matchett teaches “a system activating and analyzing the biometric data from a plurality of biometrically oriented personal identification devices at intermittent intervals selectively allows or prevents continued use of a particular protected system or device by a particular individual.”

Matchett, Abstract. Matchett’s device includes the following steps:

1. The recording of a particular user’s relevant biometric characteristics and data.
2. The storage of such data for future reference.
3. The taking of new biometric data, corresponding to that taken at step (1) above, from a prospective user as he or she attempts to use a protected system or device.
4. The comparison of new biometric data to the user’s reference biometric data.
5. The acceptance or rejection of the user based upon the results of comparison.
6. The continuous (intermittent and/or unpredictable) repetition of steps 3, 4, and 5, so long as the protected system or device is in use.
7. The rejection of the user and shutdown of the system if at any time during use the user fails more than a prescribed number of comparison tests. Matchett, col. 4, line 58 through col. 5, line 9.

Therefore, Matchett teaches a device where a particular user’s relevant biometric characteristics and data are recorded and only used as a reference point, without any disclosure whether or how characteristics or data can be updated. Thus, Matchett does not teach a data compiler integrating samples of collected data by a data collector collected over time to create a second identity reference and replace a first identity reference with the second identity reference to establish an updated first identity reference.

Therefore, Matchett fails to teach each of the elements of independent claim 1. The failure of Matchett to teach each of the elements of claim 1 is fatal to the rejection. Accordingly, Applicants respectfully request withdrawal of the rejection of independent claim 1.

Claims 2, 3, and 6 each depend from independent claim 1 and contain all the limitations thereof. Therefore, Applicants respectfully submit that claims 2, 3 and 6 are not anticipated by Matchett at least for the same reasons as independent claim 1. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 2, 3, and 6.

Regarding the rejection of claim 10, among other elements, claim 10 defines a method for authenticating a user's identity comprising storing a first identity reference, sampling collected biometric data over time, integrating samples of collected biometric data to create a second identity reference and replacing the first identity reference with the second identity reference to establish an updated identity reference similar to independent claim 1. Therefore, the discussion above regarding Matchett's failure to teach similar elements in claim 1 is equally applicable to independent claim 10. Therefore, claim 10 is not anticipated by Matchett at least for the same reasons as claim 1. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 10.

Claim 12 depends from independent claim 10 and contains all of the limitations thereof. Therefore, claim 12 is not anticipated by Matchett at least for the same reasons as independent claim 10. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 12.

Regarding the rejection of claim 15, among other elements, claim 15 defines a machine readable medium having embodied thereon instructions, which when executed by an electronic system, causes the electronic system to store a first identity reference, sampling collective biometric data over time, integrating the samples of biometric data to create a second identity reference and replacing the first identity reference with the second identity reference to establish an updated first identity reference similar to independent claim 1. Therefore, the discussion above regarding Matchett's failure to teach similar elements in claim 1 is equally applicable to claim 15. Therefore, Applicants respectfully submit claim 15 is not anticipated by Matchett at least for the same reasons as independent claim 1. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 15.

Claims 16 and 17 each depend from claim 15 and contain all the limitations thereof. Therefore, claims 16 and 17 are not anticipated by Matchett at least for the same reasons as independent claim 15. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 16 and 17.

Applicants note claims 4, 13 and 18 have been canceled and the limitations of these claims have been incorporated into independent claims 1, 10 and 15, respectively. Applicants address the Examiner's obviousness rejection of claims 4, 13 and 18 as they pertain to amended claims 1, 10 and 15.

Applicants respectfully submit the discussion above regarding Matchett failing to teach or suggest each of the elements of claims 1, 10 and 15 are equally applicable to an obviousness rejection of these claims. Therefore, Matchett fails to teach or suggest each of the elements of claims 1, 10 and 15.

The Examiner relies on U.S. Patent No. 5,910,999 issued to Mukohzaka ("Mukohzaka") to cure the defects of Matchett. The Examiner characterizes Mukohzaka as showing a fingerprinting system that integrates several images into a combined reference filter for use in authenticating users and the integration of several images provides a more accurate reference. See Paper No 2, column 4. Applicants have reviewed Mukohzaka and respectfully submit Mukohzaka fails to cure the defects of Matchett.

Mukohzaka teaches "an individual identification apparatus for confirming identities of individuals by using a pattern recognition technique." Mukohzaka, col. 1, lines 9-11. A reference pattern is picked up at a standard posture and recorded in the apparatus. See Mukohzaka, col. 1, lines 48-52. To confirm whether or not an arbitrary person or a person on file is using the apparatus, "the apparatus picks up a finger print of the arbitrary person and electronically calculates a correlation between the arbitrary individual's fingerprint and a finger print of the specific individual previously recorded in the apparatus." Mukohzaka, col. 3, lines 21-30. "The apparatus judges whether or not the arbitrary person and the specific person are the same individual based on the correlation." Mukohzaka, col. 3, lines 30-32. Therefore, Mukohzaka teaches a device which

contains a pre-recorded reference fingerprint and compares the reference fingerprint against a correlation of a number of fingerprint samples to determine whether the person using the device is on file as an authorized user. Mukohzaka does not teach or suggest a data compiler integrating samples of collected data by a data collector collected over time to create a second identity reference and replace a first identity reference with the second identity reference to establish an updated first identity reference as defined in claim 1, and similarly defined in claims 10 and 15.

Thus, Mukohzaka fails to cure the defects of Matchett. The failure of Mukohzaka to cure the defects of Matchett is fatal to an obviousness rejection of claims 1, 10 and 15. Therefore, claims 1, 10 and 15 are not obvious over Matchett in view of Mukohzaka.

III. Claims Rejected Under 35 U.S.C. §103(a) – Matchett in View of Bianco

The Examiner rejects claims 8, 9, and 20 under 35 U.S.C. § 103(a) as being obvious over Matchett in view of U.S. Patent No. 6,256,737 issued to Bianco (“Bianco”). Applicants have amended claims 1 and 15 and cancelled claim 9.

To establish a *prima facie* case of obviousness, the prior art references, when combined, must teach or suggest all of the claim limitations. See MPEP § 2143; see also In re Ray Baeck, 947 F.2d 488; 20 USPQ 2d 1438 (Fed. Cir. 1991). Applicants respectfully submit the combination of Matchett and Bianco fails to teach or suggest each of the elements of claims 8 and 15.

Claim 8 depends from claim 1 and contains all of the limitations thereof. Therefore, Applicants respectfully submit that the discussion above regarding Matchett’s failure to teach or suggest a database to store a first identity reference for a user and a data compiler to integrate samples of data collected by a data collector collected over time to create a second identity reference and replace the first identity reference with the second identity reference to establish an updated first identity reference in claim 1 is equally applicable to an obviousness rejection of claim 8. Thus, Matchett fails to teach or suggest each of the elements of claim 8.

The Examiner relies on Bianco to cure the defects of Matchett. The Examiner characterizes Bianco as disclosing a biometric authentication system geared toward enterprise networks that place user biometric data on a “biometric server” that stores the “collection of data required by the

system to authenticate users”. Paper No. 2, cols. 3-4 (citing Bianco, col. 2, lines 57-58).

Applicants respectfully submit Bianco fails to cure the defects of Matchett.

Bianco teaches “a system, method and computer program product that utilizes biometric measurements for the authentication of users to enterprise resources.” Bianco, Abstract. A biometric server stores collections of biometric templates, biometric policies, biometric groups, biometric device IDs, user IDs, computer IDs, and application IDs. See Bianco, col. 17, lines 38-41. “One or more unique biometric template 502 is created and stored in biometric server 104 each time a user enrolls on a different biometric device.” Bianco, col. 17, lines 41-44. The biometric template “stores the user’s unique biometric measurement for a particular biometric device, which is then used to match against the user’s ‘live’ biometric measurement when the biometric device is attempting to identify the user.” Bianco, col. 17, lines 44-48. Therefore, Bianco teaches a system which stores the initial biometric data to be compared to a user’s “live” biometric data for system access without disclosing whether the biometric information can be updated. Therefore, Bianco does not teach or suggest updating a first identity reference by integrating samples of data collected by a data collector collected over time to create a second identity reference and replacing the first identity reference with the second identity reference.

Thus, Bianco fails to cure the defects of Matchett. The failure of Bianco to cure the defects of Matchett is fatal to the rejection. Therefore, claim 8 is not obvious over Matchett in view of Bianco. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 8.

Claim 20 depends from claim 15 and contains all of the elements thereof. Therefore, the discussion above regarding Matchett’s failure to teach or suggest each of the elements of claim 15 is equally applicable to an obviousness rejection of claim 20. Thus, Matchett fails to teach or suggest each of the elements of claim 20.

In addition, claim 20 includes the elements of storing a first identity reference and collective biometric data to a database, sampling the collected biometric data over time, integrating the samples of collected biometric data to create a second identity reference, and replacing the first identity reference with the second identity reference to establish an updated first identity reference similar to

claim 8. Therefore, the discussion above regarding Bianco's failure to teach or suggest similar limitations in claim 8 is equally applicable to claim 20. Thus, Bianco fails to cure the defects of Matchett.

The failure of Bianco to cure the defects of Matchett is fatal to the rejection. Therefore, claim 20 is not obvious over Matchett in view of Bianco. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 20.

IV. Claims Rejected Under 35 U.S.C. §103(a) – Matchett in View of Dalude

The Examiner rejects claims 5, 14 and 19 under 35 U.S.C. § 103(a) as being obvious over Matchett in view of U.S. Patent No. 6,310,966 issued to Dalude ("Dalude"). Applicants amend claims 1, 10, and 15.

To establish a *prima facie* case of obviousness, the prior art references, when combined, must teach or suggest all of the claim limitations. See MPEP § 2143; see also In re Ray Baeck, 947 F.2d 488; 20 USPQ 2d 1438 (Fed. Cir. 1991). Applicants respectfully submit the combination of Matchett and Dalude fails to teach or suggest each of the elements of claims 5, 14 and 19.

Claim 5 depends from claim 1 and includes all of the limitations thereof. Therefore, Applicants respectfully submit that the discussion above regarding Matchett's failure to teach or suggest a database to store a first identity reference for a user and a data compiler to integrate samples of data collected by a data collector collected over time to create a second identity reference and replace the first identity reference with the second identity reference to establish an updated first identity reference in claim 1 is equally applicable to an obviousness rejection of claim 5. Thus, Matchett fails to teach or suggest each of the elements of claim 5.

The Examiner relies on Dalude to cure the defects of Matchett. The Examiner characterizes Dalude as teaching a system wherein biometric identity data in the form of a digital certificate is attached to user data. See Paper No. 5, Column 4. Applicants respectfully submit Dalude fails to cure the defects of Matchett.

Dalude teaches a biometric certification system and method which implement an end-to-end security mechanism binding the biometric identification of consumers with digital certificates. See Dalude, col. 3, lines 31-34. In addition, Dalude teaches a device having pre-stored biometric data and comparing biometric data of a user to the pre-stored measurements before a user can gain access to a system. See Dalude, col. 5, lines 26-28. Therefore, Dalude teaches a device which only contains pre-stored biometric data as reference and does not disclose whether the biometric can be updated. Therefore, Dalude does not teach or suggest updating a first identity reference by integrating samples of data collected by a data collector collected over time to create a second identity reference and replacing the first identity reference with the second identity reference.

Thus, Dalude fails to cure the defects of Matchett. The failure of Dalude to cure the defects of Matchett is fatal to the rejection. Therefore, claim 5 is not obvious over Matchett in view of Dalude. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 5.

Regarding the rejection of claims 14 and 19, these claims each depend from claims 10 and 15, respectively, and contain all of the limitations thereof. Therefore, the discussion above regarding Matchett failing to teach or suggest each of the limitations of claim 10 and 15 is equally applicable to claims 14 and 19. Therefore, Matchett fails to teach or suggest each of the limitations of claims 14 and 19.

The Examiner relies on Dalude to cure the defects of Matchett. Applicants respectfully submit that claims 14 and 19 contain limitations similar to claim 5 discussed above. Therefore, the discussion above regarding Dalude failing to cure the defects of claim 5 is equally applicable to similar limitations recited in claims 14 and 19. Therefore, Dalude fails to cure the defects of Matchett.

The failure of Dalude to cure the defects of Matchett is fatal to the rejection. Therefore, claims 14 and 19 are not obvious over Matchett in view of Dalude. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 14 and 19.

V. Claims Rejected Under 35 U.S.C. §103(a) – Matchett in View of Mukohzaka

The Examiner rejects claims 4, 13, and 18 as being obvious under 35 U.S.C. § 103(a) as being obvious over Matchett in view of Mukohzaka. Applicants have cancelled claims 4, 13 and 18 without prejudice. Applicants have addressed the combination of Matchett and Mukohzaka above and respectfully re-submit that this combination fails to teach or suggest each of the elements of claims 1, 10 and 15 for at least the reasons discussed above.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending are now in condition for allowance and such action is earnestly solicited at the earliest possible date. If there are any additional fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666. Questions regarding this matter should be directed to the undersigned at (310) 207-3800.

Respectfully submitted,

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Nadya Gordon 10/14/03
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